

U.S. Patent Application Serial No. 09/880,198
Applicant: Will L. Culpepper

REMARKS

This Amendment with the accompanying remarks is believed to be fully responsive to each point raised by the Examiner. Review and consideration is respectfully requested in view of the following remarks.

Briefly reviewing the Non-Final Office Action, Claims 1-6 are currently pending in the application. Claims 1-6 are rejected under 35 U.S.C. § 103 for obviousness over *Calvert* in view of *Kruit*.

In regard to the obviousness rejection of Claims 1-6, the Examiner has not shown that all the elements of a *prima facie* case of obviousness have been met. Applicant respectfully traverses the rejection and requests reconsideration. Applicant has reviewed the cited art and has found that nothing therein which would teach or suggest modifying the cited art in the manner proposed by the Examiner.

The prior art does not teach the present invention because the Examiner's cited combination does not result in the claimed invention as claimed in Claims 1-6. Base Claims 1 and 5 require a plurality of cartons each having an end-opening width of *less than* the pitch between a pair of flight bars. Claims 1 and 5 also require the plurality of cartons to have a combined end-opening width *equal* to the pitch. The cited combination does not result in the claimed invention because neither *Calvert* nor *Kruit* disclose an individual carton having an end-

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opening width of less than the pitch or disclose a combination of cartons having a combined end-opening width equal to the pitch.

In particular, in paragraph 2 of the Office Action, the Examiner concedes that *Calvert* only discloses forming a single carton and, therefore, relies upon *Kruit* for disclosing the formation of a plurality of cartons attached to one another. In *Kruit*, and as in the present invention, the pitch of the machine is related to the width of the open end of a carton to be loaded. Then, in *Kruit*, the pitch is defined between the two contact plates 35 at the ends of the carton as best shown in Figs. 8 and 9. The pitch in such case would be equal to the end-opening width of a single carton and, therefore, the end-opening width would not be less than the pitch as called for in the claims of the present invention.

The pitch of the *Kruit* machine may not be defined as being the distance between adjacent contact plates, such as the adjacent contact plates corresponding with the partition flaps, because those skilled in the art understand the pitch of the machine to be related to the width of the open end of a carton rather than merely the distance between adjacent contact plates corresponding with each article to be loaded. Moreover, the present invention is directed to the width of the open end of the carton being less than the pitch rather than the width of each space between partition flaps being less than the pitch. Therefore, reconsideration of Claims 1 and 5 is respectfully requested because the cited art fails to teach each carton itself having an end-opening width of less than the pitch.

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Also, as called for in Claims 1 and 5, the combined end-opening width of a pair of cartons in the cited art are not equal to the pitch. In particular, the pair of cartons in *Kruit* do not combine with one another to have a width equal to the pitch. If a pair of cartons in *Kruit* were combined to be loaded as in the present invention, the combination of the widths of the end-openings would be twice the pitch. In *Kruit*, only after a carton is loaded is it then combined with another carton that was separately loaded. Thus, the pitch of the machine in *Kruit* does not correspond to the combined width of the end-openings of the pair of cartons to be loaded as in the present invention.

Therefore, the cited combination does not teach the present invention because the cited combination does not result in a plurality of cartons where each carton has a width less than the pitch. The cited combination also does not result in the plurality of cartons having a combined end-opening width equal to the pitch. Simply, the cited art does not operate in the manner claimed by the present invention and would require a change in function of the device in the cited art to make the obvious rejection. Reconsideration of the obviousness rejection of Claims 1-6 is respectfully rejected because the cited combination does not result in the claimed invention and, therefore, does not teach the present invention.

Furthermore, reconsideration of the obviousness rejection of Claims 1-6 is also respectfully requested because the Examiner has not examined the claims of the present invention based upon whether there is a suggestion or motivation in the cited references for the

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claimed combination of elements. Obviousness cannot be established by combining the teachings of the cited art, absent some teaching or suggestion from the cited art supporting the combination. *See In re Dembiczak*, 175 F.3d 994; 50 U.S.P.Q. 2d (Fed. Cir. 1999). Thus, the Examiner in the present case has failed to establish a *prima facie* case of obviousness because the Examiner's cited art does not provide some reason, suggestion or motivation, as a whole, for the person of ordinary skill to have combined or modified the Examiner's cited references.

Applicant asserts that if a cited combination of references is silent as to a particular element, such as a carton having an end-opening width less than the pitch of the packaging machine, than the particular cited combination of references does not teach or suggest the claimed invention. Moreover, references disclosing only cartons having an end-opening width equal to the pitch of the packaging machine does not make obvious a plurality of cartons having a combined end-opening width equal to the pitch. There is no suggestion or motivation in *Kruit* that two cartons can be combined between a pair of plates to correspond with the pitch of the packaging machine. Therefore, the cited references fail to suggest placing a pair of open cartons between a single pair of flight bars, as if the combination of open cartons were a single carton to be loaded, so that the packing machine does not have to be refitted to accommodate individual smaller cartons. Reconsideration of the obviousness rejection is respectfully requested because there is no suggestion or motivation in the cited references for the claimed combination of elements of the present claims.

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Although *Kruit* discloses attaching erected cartons to one another, suggesting that *Kruit* then discloses cartons having a combined end-opening width to correspond to the pitch of the packaging machine, as if the combination of open cartons were a single carton to be loaded, would be taking *Kruit* out of context of what is actually disclosed. The cited art does not operate in the manner claimed by the present invention and the cited combination of prior art would require a change in function of the devices in the cited art to make the rejection.

Applicant asserts that *Kruit* actually teaches away from the present invention. *Kruit* teaches that the containers are only attached to one another after each carton has been separately loaded. Applicant asserts this is because *Kruit* teaches that the pitch of the packaging machine may only accommodate a single open ended carton. Thus, *Kruit* teaches away from the present invention because it expressly suggests that containers must be loaded separately and, therefore, would not likely result in the invention claimed by the Applicant directed to utilizing the existing pitch of the packaging machine to receive and load multiple cartons simultaneously.

Accordingly, Applicant asserts that there is no suggestion or motivation to combine the cited references because *Kruit* teaches away from the claimed invention. The Examiner in the present case has failed to establish a *prima facie* case of obviousness because the Examiner's cited art does not provide some reason, suggestion or motivation, as a whole, for the person of ordinary skill to have combined or modified the Examiner's cited references.

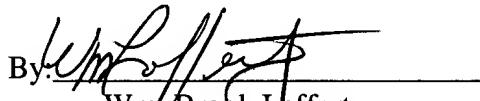
As to the above noted combination of elements of the present invention, the Examiner's

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references fail to teach the present invention as well as provide a motivation or suggestion to modify the cited art as the Examiner has suggested. And for the reasons advanced above, it is urged that the Applicant's invention is unobvious over the prior art. Therefore, reconsideration of the rejected claims based upon obviousness is respectfully requested.

Based on the forgoing, it is submitted that Claims 1-6 comply with the Examiner's requirements and are in condition for allowance. Applicant asserts that the present invention is patentably distinguishable over the cited prior art. Should any minor points remain prior to issuance of a Notice of Allowance, the Examiner is requested to telephone the undersigned at the below listed telephone number.

Respectfully submitted,

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